

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 10549 of 2007(E)

PETITIONER:

R.N.SUBRAMONEY,
4C, J.M.PARADISE,
THAMMANAM ROAD,PALARIVATTOM.

BY ADV. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS:

1. TAHSILDAR,KANAYANNOOR TALUK,COCHIN
NEAR DISTRICT COURT COMPLEX,ERNAKULAM.

***ADDL.R2.** M/S JYOMAN BUILDERS AND REAL ESTATE PVT. LTD.,
IN LIQUIDATION REPRESENTED BY SRI V. RAJENDRAN,
ADVOCATE, HIGH COURT OF KERALA ,
RECEIVER IN C.P .NO.37/98.

***(*ADDL.R2 IS IMPEADED AS PER ORDER DATED 28.03.2007
IN I.A.NO. 4826 OF 2007.)***

BY ADV. SRI.V.RAJENDRAN (ADV.RECIVER)
BY SPECIAL GOVERNMENT PLEADER FOR TAXES SRI V.V.ASOKAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P.(C) 10549 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

- Ext. P1 : TRUE COPY OF NOTICE DATED 17.01.2007
RECEIVED BY THE PETITIONER FROM RESPONDENT.
- Ext. P2 : TRUE COPY OF REPLY IN EXT.P1 DATED
14.02.2007.
- Ext. P3 : TRUE COPY OF ORDER OF THE RESPONDENT
DATED 27.02.2007.
- Ext. P4 : TRUE COPY OF NOTICE OF DEMAND DATED
27.02.2007
- Ext. P5 : TRUE COPY OF AGREEMENT OF THE PETITIONER'S
AND 31 OTHERS.

/true copy/

P.A. TO JUDGE

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....
W.P.(C) No. 10549 OF 2007
.....

Dated this the 4th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Questioning the correctness or otherwise of the Ext.P4 assessment order and Ext.P4 (2) demand notice, the petitioner is before us in this appeal.

2. The only point raised for our consideration in this Writ Petition is whether the Tahsildar is justified in passing the impugned order without advertng to the detailed statement of objections filed by the respondent/petitioner herein pursuant to the notice received by him, from the Tahsildar, under the provisions of Kerala Building Tax Act , 1975.

3. In the present case, the petitioner is the owner of an apartment in the flat with 32 independent and separate apartments.

4. A notice has been issued by the Tahsildar inter alia proposing to assess the flats owned by the petitioner and other 31 apartment owners for levy of tax under the provisions of the Kerala Building Tax Act, 1975. After the receipt of notice, the petitioner had filed a detailed objection to the said notice and also requested the Tahsildar to drop the proceedings. It is the grievance of the petitioner before us that the first respondent, without advertng to any one of the

defence raised by the petitioner, has proceeded to issue notice proposing to tax the flats owned by the petitioner and other 31 apartment owners. According to the petitioner, the action of the first respondent is in total violation of principles of natural justice .

5. The admitted facts are:

The first respondent herein had issued a notice proposing to tax the flats owned by the petitioner and 31 others under the provisions of the Kerala Building Tax Act, 1975. The petitioner had filed a detailed statement of objections. The first respondent ought to have considered the objections and passed appropriate orders. Without doing so, the Tahsildar has passed the impugned order. This action of the first respondent, in our opinion, is in violation of one of the facets of the principles of natural justice. Therefore, the aforesaid order cannot be sustained by us in this appeal .

6. In view of the above discussions, in our opinion, the orders passed by the Tahsildar, the first respondent herein cannot be sustained by us. Accordingly, the following:

ORDER

- i) Writ Petition is allowed.
- ii) The orders passed by the Tahsildar under Ext. P4 and the demand notice under Ext. P4(2) are set aside.

- iii) The matter is remitted back to the Tahsildar to redo the matter in accordance with law, after taking into consideration the objections filed by the petitioner. The Tahsildar shall afford an opportunity of being heard to the Official Receiver as well as to the parties.
- iv) All the contentions of both the parties are left open.

Ordered accordingly.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**